

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11994-RWZ

DENNIS EAST INTERNATIONAL, INC.

v.

AtHOME AMERICA, INC.

PRETRIAL ORDER
October 16, 2006

ZOBEL, D.J.

This matter having come before the court at a pretrial conference held pursuant to Rule 16, Fed.R.Civ.P., 28 U.S.C., and G. Arthur Hyland, Jr., Esq., having appeared as counsel for plaintiff, and Nicholas P. Alexander, Esq., and Thomas L. Holt, Esq., having appeared as counsel for defendant, the following action was taken:

1. TRIAL

Trial with a jury is scheduled to commence on January 29, 2007, at 9:00 a.m. and is estimated to last two days.

2. JURY

The court will impanel eight jurors. Counsel shall file any proposed questions to the jury on voir dire by January 22, 2007. Each side will have four peremptory challenges.

3. ISSUES

The parties agree that only five products are implicated and that as to them the only issues to be tried are:

- a) whether defendant infringed plaintiff's trademark;
- b) whether the infringement was wilful, that is, whether defendant intended to copy;
- c) the amount of damages.
Plaintiff claims damages based on defendant's profits, except for a small claim with respect to returned goods as to which it seeks lost profits;
- d) the amount of wilfulness damages, to be determined by the court.

In lieu of the damages set forth in paragraphs c) and d), plaintiff is entitled to recover statutory damages. It shall choose and inform defendant and the court before trial of its choice.

4. EXHIBITS

Prior to the commencement of trial, counsel shall confer with each other concerning any exhibits each intends to offer and note any objections each may have to the exhibits of the other. All exhibits to which opposing counsel do not object shall be deemed to be admitted into evidence. Counsel shall mark these exhibits and prepare a listing thereof, in duplicate. Objected to exhibits shall be marked for identification and listed separately.

5. WITNESSES

On or before January 22, 2007, each party shall file a list of witnesses who will testify at trial.

6. REQUESTS

On the first day of trial, counsel shall file:

(a) Requests for instructions; and

(b) Proposed questions to the jury on special verdict.

7. SETTLEMENT

Counsel shall report the status of settlement discussion on or before November 9, 2006.

8. STIPULATION

On or before the first day of trial, counsel shall file with the court a stipulation of all facts not in dispute.

__October 16, 2006_____
DATE

_/s/Rya W. Zobel_____
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE